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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89059; File No. SR-NYSE-2020-50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Temporarily the Auction Collars for Exchange-Facilitated Core Open Auctions Under Rule 7.35C

June 12, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on June 11, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to Designated Market Makers (“DMMs”) or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of \$1.00 or 10% away from the Auction Reference Price for the Core Open Auction. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of \$1.00 or 10% away from the Auction Reference Price for the Core Open Auction.

Background

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.31(c) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers.⁵

⁴ The Exchange's rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

Because the Trading Floor facilities are now temporarily closed to DMMs, DMMs are not on the Trading Floor and therefore cannot manually facilitate most types of Auctions.⁶

While the Trading Floor is temporarily closed, DMMs electronically participate in continuous trading and facilitate Auctions. As provided for under Rule 7.35C, any Auctions that cannot be facilitated electronically by the DMM will be facilitated by the Exchange.

Rule 7.35C sets forth the procedures for Exchange-facilitated Auctions. Currently, the Exchange will facilitate an Auction only if a DMM cannot facilitate an Auction for one or more securities. The Exchange determines an Auction Price based on the Indicative Match Price for a security, which is bound by Auction Collars.⁷ Currently, the Auction Collars for the Core Open Auction are at a price that is the greater of \$0.15 or 10% away from the Auction Reference Price.⁸

During the period while the Trading Floor has been temporarily closed, the Exchange has facilitated 2.35% of the Core Open Auctions, with DMMs electronically facilitating the balance

Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

⁵ See Securities Exchange Act Release No. 88933 (May 22, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

⁶ During this temporary closure of the Trading Floor, a DMM may manually facilitate either on the Trading Floor or remotely an IPO Auction, a Core Open Auction for a post-IPO public offering, or a Trading Halt Auction following a regulatory halt. See Commentaries .02, .03, .04, and .05 to Rule 7.35A.

⁷ See Rule 7.35C(b)(2).

⁸ See Rule 7.35C(b)(3)(A)(i). Rule 7.35C(b)(1) provides that the Auction Reference Price for a Core Open Auction is the same as the Imbalance Reference Price determined under Rule 7.35A(e)(3). Pursuant to Rule 7.35A(e)(3), the Imbalance Reference Price for a Core Open Auction is the Consolidated Last Sale Price, unless a pre-opening indication has been published. Pursuant to Rule 7.35(a)(11)(A), the term “Consolidated Last Sale Price” means the most recent consolidated last-sale eligible trade in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

of more than 97% of Core Open Auctions. Approximately 30% of the Exchange-facilitated Core Open Auctions have had an Indicative Match Price that was subject to an Auction Collar, and approximately 50% of these collared Exchange-facilitated Core Open Auctions were in securities trading at prices under \$10.00. If Auction Collars had not been applied to these securities priced under \$10.00, they would have opened at a price between \$0.15 and \$1.00 away from the Auction Reference Price.

Proposed Rule Change

The Exchange proposes to add Commentary .04 to Rule 7.35C to provide that, for a temporary period that begins June 15, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Auction Collar for the Core Open Auction will be a price that is the greater of \$1.00 or 10% away from the Auction Reference Price for the Core Open Auction.

The Exchange believes that this proposed rule change would reduce the number of Exchange-facilitated Core Open Auctions subject to Auction Collars during the temporary Trading Floor closure, and therefore would reduce the potential number of securities that would open at a price that may not represent the current value of the security due to unfilled marketable auction interest, while still preserving investor protections by preventing significantly dislocated openings.

The Exchange proposes to keep the 10% price parameter, but increase the size of the static price change from \$0.15 to \$1.00. This proposed rule change would therefore modify the price parameters for determining Auction Collars only for securities priced under \$10.00.⁹ As

⁹ For example, currently, a security with an Auction Reference Price of \$9.00 would have Auction Collars of \$0.90, and a security with an Auction Reference Price of \$2.00 would

noted above, approximately 50% of the Exchange-facilitated Core Open Auctions that have been subject to Auction Collars have been in securities priced under \$10.00. Therefore, the Exchange believes that this proposed wider Auction Collar would significantly reduce the number of securities subject to a collared Exchange-facilitated Core Open Auction. More specifically, with this proposed rule change, securities with an Auction Reference Price under \$10.00 would be more likely to open at a price that is consistent with the buy and sell interest in the security at the opening.

There are technology changes associated with this proposed rule change that the Exchange anticipates will be implemented on June 11, 2020.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID-19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO made a determination under Rule

have Auction Collars of \$0.20. With this proposed change, both securities would have an Auction Collar of \$1.00.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. However, the Trading Floor has not yet been reopened in full to DMMs.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the number of securities that would be subject to a collared Exchange-facilitated Core Open Auction. As noted above, the Exchange has facilitated only 2.35% of the Core Open Auctions during the temporary Trading Floor closure, and only 30% of those Exchange-facilitated Auctions have been subject to an Auction Collar. The proposed rule change would change how the Auction Collars are determined for securities with an Auction Reference Price under \$10.00. Because approximately 50% of the collared Exchange-facilitated Auctions to date were priced under \$10.00, the Exchange believes that this proposed rule change would reduce the number of Exchange-facilitated Core Open Auctions subject to Auction Collars, and therefore would reduce the potential number of securities that would open at a price that may not represent the current value of the security due to unfilled marketable auction interest, while still preserving investor protections by preventing significantly dislocated openings. This proposed rule change would therefore promote the fair and orderly operation of Exchange-facilitated Auctions by allowing such securities to open at a price that is consistent with the buy and sell interest in the security, even if such price is more than \$0.15 away from the Auction Reference Price, which would also allow more buy and sell interest to participate in such Auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to

provide for wider Auction Collars for Exchange-facilitated Core Open Auctions in securities priced under \$10.00 during a temporary period when the Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change would provide for wider Auction Collars for Exchange-facilitated Core Open Auctions in securities priced under \$10.00 during a temporary period, when the Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19. The Exchange has represented that approximately 50% of the collared Exchange-facilitated Auctions are in securities priced under \$10.00. The Exchange believes that the proposed rule change would promote fair and orderly Core Open Auctions by allowing more buy and sell interest to participate at prices consistent with such buy and sell interest. The Exchange has also represented that it will be able to implement these changes on June 15, 2020. The Commission notes that the proposed wider collars would only apply to Exchange-facilitated Core Open Auctions.¹⁸ Furthermore, the proposed rule change would modify the price parameters for determining Auction Collars only for securities priced under \$10.00. The Commission also notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions, and would end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁹

¹⁸ As the Exchange notes above, during the period while the Trading Floor has been temporarily closed, it has facilitated 2.35% of the Core Open Auctions, with DMMs electronically facilitating the balance of more than 97% of Core Open Auctions.

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-50 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-50, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12), (59).

